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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,380	01/06/2006	Thomas James McArthur	70996.00003	2136
29880 7590 12/10/2008 FOX ROTHSCHILD LLP PRINCETON PIKE CORPORATE CENTER 2000 Market Street Tenth Floor Philadelphia, PA 19103				
EXAMINER				
LEITH, PATRICIA A				
ART UNIT		PAPER NUMBER		
1655				
MAIL DATE		DELIVERY MODE		
12/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/521,380

**Applicant(s)**

MCARTHUR, THOMAS JAMES

**Examiner**

Patricia Leith

**Art Unit**

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 12-14, 20, 22-42 and 47-67 is/are pending in the application.
- 4a) Of the above claim(s) 33-42 and 47-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-7, 12-14, 20, 22-32 and 63-67 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

Claims 1-7, 12-14, 20, 22-42 and 47-67 are pending in this application.

### ***Election/Restrictions***

Applicant's election with traverse of the species of 'sores' in the reply filed on 8/25/2008 is acknowledged. The traversal is on the ground(s) that the entire scope of species may be made without serious burden in that the species of 'wound' are closely related (pp. 11-12, Remarks). This is not found persuasive because the species of wounds are not found to be closely related (e.g., an infection and scarring are quite different and these species are not considered wounds per se) and further, Applicant has not explicitly stated on the record that these species would be obvious variants. Hence, the requirement is still deemed proper and is therefore made FINAL.

The previous communication to Applicant indicated that claims 43-46 were directed toward a different invention than originally claimed (see p. 2, Election Requirement of 5/28/2008). Claims 43-46 were subsequently cancelled by Applicant. A more extensive evaluation of the newest claims added in the amendments filed 2/7/08 and 8/25/08 indicates that claims 33-42 and 47-67 are independent or distinct from the invention originally claimed for the following reasons:

Claims 33 and 34 are directed toward processes for making a cosmetic and therapeutic composition respectively. Claims 35-42 depend upon either one of claims 33 or 34. This invention is unrelated to the Invention originally claimed in claim 10 in that claim 10 was directed toward a method using a composition prepared by the method of claim 1 which does not require the addition of a therapeutic or cosmetic additive. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions would be markedly different if they contained ancillary ingredients such as pharmaceutically/cosmetically acceptable carriers. It can be seen from the prior art itself that the product made from the method of claim 1 can be directed toward a food product (e.g., jam). Thus, it is clear that the methods of claims 33-42 are patentably distinct from the method as originally claimed in claim 10.

Claims 47-50 are directed toward a composition comprising a filtrate produced by the process of claim 2, and a method for treating a wound with said composition. Claims 51-54 are directed toward a composition comprising a 'residue' by the process of claim 3, and a method for treating a wound with such a composition. Claims 55-58 are directed toward a composition comprising a 'filtrate' produced by the process of claim 3 and a method for treating a wound with said composition. Claims 59-62 are directed toward a composition comprising a 'residue' produced by the process of claim

3 and a method for treating a wound with said composition. Claim 3 and these compositions and methods are patentably distinct and lacks unity of invention with the originally claimed composition in that the composition originally claimed was the product produced by the method of claim 1. The product produced by the method of claim 1 is clearly not entirely present in the 'filtrate' or residue as required by claims 47-50 or 51-54 or 55-58 or 59-62 and hence, these claims lack unity of invention with the originally claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 33-42 and 47-62 are hereby withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Upon further consideration, claims 1-7, 12-14, 20, 22-32 and 63-67 are subject to an additional restriction requirement:

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- 1) species of plant material (e.g., claim 26) and
- 2) species of base, for example, bicarbonate or carbonate or a specific species of base as recited by claim 29.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claim 26 recites a Markush group of many fruit and/or vegetables. Claim 24 further states a group consisting of pawpaw and peach. All of these species of fruit are distinct in that each respective fruit will produce a different composition when prepared by the process of claim 1. Claim 27 is directed toward wherein the base is a

bicarbonate and or carbonate. Claim 29 is directed toward a Markush group of bases which comprise distinct bases.

The following claim(s) are generic: Claims 1-7.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Each plant species varies with regard to physical composition and intrinsic phytochemical make-up. Hence, each respective plant/vegetable would provide for distinct therapeutic effects when administered to a patient. Additionally, the species of base such as bicarbonate or carbonate or the species of bases recited in claim 29 are distinct in that each base is structurally and functionally different and would result in distinct products.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia Leith  
Primary Examiner  
Art Unit 1655

/Patricia Leith/

Primary Examiner, Art Unit 1655